

IN THE DISTRICT COURT OF BECKHAM COUNTY  
STATE OF OKLAHOMA

KENNETH H. TIBBETS, )  
)  
PETITIONER, )  
)  
VS. )  
)  
THE STATE OF OKLAHOMA, )  
RESPONDENT. )

BECKHAM COUNTY  
FILED

OCT 05 2023

CASE NO. CF-2015-188

DONNA HOWELL, COURT CLERK  
BY [Signature] DEPUTY

**ORDER RECOMMENDING APPEAL OUT OF TIME**

**POST CONVICTION FINDINGS**

**ORIGINAL CHARGES:**

- Count 1: Robbery with a Weapon After Former Felony Conviction (Life imprisonment)
- Count 2: Possession of a Firearm After Former Felony Conviction (10 years)
- Count 3: Kidnapping After Former Felony Conviction (Life imprisonment)
- Count 4: Kidnapping After Former Felony Conviction (Life imprisonment)
- Count 5: Attempted Robbery with a Dangerous Weapon After Former Felony Conviction (Life Imprisonment)
- Count 6: Attempted Robbery with a Dangerous Weapon After Former Felony Conviction (Life Imprisonment)
- Count 7: Possession of a Firearm After Former Felony Conviction (10 years)

**JUDGMENT AND SENTENCE DATE:** March 30, 2016

**APPLICATION FOR POST-CONVICTION RELIEF FILED:** September 7, 2023

**RESPONSE OF DISTRICT ATTORNEY FILED:** October 4, 2023

**WAS FORM AUTHORIZED BY COURT OF CRIMINAL APPEALS USED?** In part.

**PROCEEDINGS IN COURT OF CRIMINAL APPEALS, IF ANY:** C-2016-419, MA-23-96, and PC-23-381.

**IS THERE A GENUINE ISSUE OF MATERIAL FACT?** No

**IS AN EVIDENTIARY HEARING NECESSARY?** No

**MATERIAL CONSIDERED BY THE REVIEWING COURT:**

Application for Post-Conviction Relief filed on September 7, 2023;  
Docket Sheet in CF-2015-188;  
Post Conviction findings filed March 29, 2023;

**EXHIBIT 27**

Certificate of Delivery filed March 29, 2023;  
Notice of Post-Conviction Appeal filed April 18, 2023.

**FINDINGS OF FACT:**

1. The Court denied Petitioner's Post-Conviction Application and a certified copy of the Post-Conviction Findings were mailed to Petitioner on March 29, 2023.
2. Petitioner received the Court's ruling on March 31, 2023, at Joseph Harp Correctional Center.
3. Petitioner filed a Notice of Post-Conviction Appeal on April 18, 2023.
4. Petitioner wrote the Beckham County Court Clerk requesting a certified copy of the Notice of Post-Conviction Appeal. The letter was filed on June 14, 2023.
5. Petitioner alleges that he did not receive a file stamped copy of the Notice of Post-Conviction Appeal until June 20, 2023.
6. Nothing in the file indicates that Petitioner was notified of the filing of the Notice of Post-Conviction Appeal prior to June 20, 2023.
7. The Beckham County Court Clerk did not prepare the record for appeal as required by Court of Criminal Appeals Rule 5.3(B)(1).

**CONCLUSIONS OF LAW:**

Petitioner requests an appeal out of time, alleging that he could not timely file his Petition in Error because he did not know the date of filing of the Notice of Post-Conviction Appeal. This The date of filing must be included in the Petition in Error. Court of Criminal Appeals Rule 5.2(C)(2). Nothing in the record indicates that the Beckham County Court Clerk sent Respondent a file-stamped copy of the Notice of Post-Conviction Appeal. Further, the Court Clerk did

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prepare the record and give notice of completion within 30 days as required by Court of Criminal Appeals Rule 5.3(B)(1).

Further, the undersigned judge did not monitor and ensure timely notice was provided to the parties by the clerk of the District Court as required by Court of Criminal Appeals Rule 5.4(B).


The Court is satisfied on the basis of the application that Petitioner was denied an appeal at no fault of his own, and he is entitled to post-conviction relief.

**ORDER: IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** the Court recommends an appeal out of time of the Post-Conviction Findings filed on March 29, 2023. Petitioner shall file a petition for an appeal out of time in the Court of Criminal Appeals within thirty (30) days of this ruling. The petitioner must comply with Court of Criminal Appeals Rule 2.1(E)

**DATE:** October 5, 2023.

**COURT REPORTER PRESENT:** None.

The Court Clerk of Beckham County is directed to mail a certified copy of this Order to the Petitioner on the date of filing of this Order.

  
**JILL C. WEEDON**  
**DISTRICT JUDGE**

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